

Heller Ehrman White & McAuliffe LLP  
Attorney Docket No. 38025-0030

U.S. Serial No. 09/822,841  
Martin L. LENHARDT

### Remarks

This Amendment is filed in reply to the Office Action mailed August 15, 2003. Reconsideration of the present application in view of the foregoing amendments and following remarks is respectfully requested.

Claims 1, 5 and 10 – 13 are canceled without prejudice or disclaimer while reserving all rights to reassert the claims in this or related applications. Claims 2, 3, and 6 are amended. Consequently, claims 2 – 4, 6 – 9 and 14 – 18 are now pending. No new matter is added by the amendments, which are fully supported by the specification.

In the Office Action, claim 10 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,325,872 to Westermann; claims 1, 3, and 10 – 12 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,377,693 to Lippa; claims 2, 4, 5 and 13 were rejected under 35 U.S.C. § 103(a) as unpatentable over Lippa; claims 14 – 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over PCT Publication No. WO 02/062264 A2 to Viirre; and claims 6 – 9 were rejected under 35 U.S.C. § 103(a) as unpatentable over Lippa in view of Viirre. These rejections are respectfully traversed.

#### **I. Rejections of Claims 2 – 4**

Claim 2 has been amended to place it in independent form by incorporating all limitations of claim 1 from which it depended.

The rejection of claim 2 in view of Lippa is respectfully traversed for the following reason. Claim 2 recites that the amplitude level of the at least one upper audio frequency is to be no more than 20 dB greater than a threshold level of sound for the person. Lippa does not teach or suggest this amplitude level. Lippa merely states that the "volume and frequency of the ultrasonic masking signals are adjusted for optimum efficacy in masking tinnitus." However, this does not teach a level of no more than 20

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db greater than a threshold level of sound. Further, Lippa teaches away from the amplitude level in the case where optimum efficacy is determined to be achieved by signals that are greater than 20 dB above the threshold level of sound. Since this recitation is not disclosed in Lippa, withdrawal of the rejection of claim 2 is respectfully requested. Claim 4 is allowable for depending from claim 2 which is now in condition for allowance.

The rejection of claim 4 is further traversed for the additional reason that it recites a frequency not disclosed or suggested in Lippa. Specifically, claim 4 recites that the at least one upper audio frequency is swept over a range of frequencies centered at the at least one upper audio frequency. Thus, the claim recites that the source outputs a varying frequency that sweeps through a range of frequencies about a center frequency. This element is not taught or even suggested in Lippa. Since this element of claim 4 is entirely missing from Lippa, withdrawal of the rejection of claim 4 is respectfully requested.

Claim 3 has been amended to depend from claim 4. Since claim 4 is allowable over Lippa, withdrawal of the rejection of claim 3 is also respectfully requested.

## **II. Rejections of Claims 6 – 9 and 14 – 18**

Claims 6 – 9 and 14 – 18 were rejected in the Office Action in view of Viirre, either alone (claims 14 – 18) or in combination with Lippa (claims 6 – 9). These rejections are overcome by establishing invention of the subject matter of these claims prior to the filing date of the Viirre reference.

The Viirre reference was filed on February 5, 2001, less than two months before the filing date of the present application. Pursuant to 37 C.F.R. 1.131, Applicant herewith submits a declaration which establishes that he was in full possession of the claimed invention prior to February 5, 2001. In particular, compact discs containing recorded tinnitus treatment signals were prepared at Applicant's direction prior to February 5, 2001. Thus, Applicant conceived and actually reduced the claimed invention to practice before the Viirre priority date.

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Accordingly, withdrawal of the rejections under 35 U.S.C. § 103(a) of claims 6 – 9 and 14 – 18 is respectfully requested.

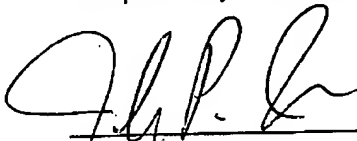
### CONCLUSION

In view of the above amendment and remarks, Applicant respectfully requests that all objections and rejections be withdrawn and that a notice of allowance be forthcoming. The Examiner is invited to contact the undersigned attorney for Applicant at 202-912-2777 for any reason related to the advancement of this case.

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Respectfully submitted,



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